

WHEN RECORDED RETURN TO:

City of Mesa  
Attn: Real Estate Department  
20 East Main Street  
Mesa, Arizona 85201

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date"), by and between the CITY OF MESA, an Arizona municipal corporation (the "City"), and EL DORADO ELLIOT 128, LLC, an Arizona limited liability company (the "Owner"). City and Owner are collectively referred to herein as the "Parties," or individually as a "Party."

### **RECITALS**

A. Owner owns approximately +/- 40.5 net acres of property located near the northwest corner of East Elliot Road and South Ellsworth Road in Mesa, Arizona (APNs 304-03-041B, 304-03-847A, and a portion of 304-03-846J), as legally described and depicted in Exhibit A (the "Property").

B. The Property is currently zoned Limited Commercial (LC) with a Planned Area Development Overlay (APNs 304-03-847A, 304-03-041B and a portion of 304-03-846J) and Planned Employment Park (PEP) with a Planned Area Development Overlay (a portion of APN 304-03-846J), and the Owner has submitted an application to rezone the entire Property to Light Industrial with a Planned Area Development Overlay ("LI PAD") through Zoning Case ZON21-00224 ("Zoning Request").

C. The Property is in the Elliot Road Technology Corridor Planned Area Development Overlay ("Technology Corridor"), and Owner is choosing not to have the Property "opt-into" the Technology Corridor zoning.

D. The Parties acknowledge that several of the land uses allowed in the proposed LI PAD do not align with the intended land uses of the Technology Corridor; therefore, to address this concern, the Owner has agreed to limit certain uses that are allowed in the proposed LI PAD zoning district.

E. The Parties desire to enter into this Agreement for the purpose of limiting the land uses permitted on the Property as may be required by Mesa Zoning Ordinance 11-22-2 and intend this document to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties state, confirm and agree as follows:

1. Owner's Duties and Obligations. Owner, its successors and assigns agree that the obligations set forth in this Agreement are covenants running with the land that are binding and enforceable upon Owner, its successors and assigns.

2. Prohibited Uses. The following land uses in the Mesa Zoning Ordinance (Mesa City Code Title 11), as amended, shall be prohibited on any portion of the Property and shall not be allowed:

- Correctional Transitional Housing Facility (CTHF)
- Clubs and Lodges
- Cultural Institutions
- Day Care Centers as a stand-alone use, allowed as a component of a service to on-site business and industry
- Places of Worship
- Schools, Public or Private
- Animal Sales and Services
  - Kennels
  - Pet Stores
  - Veterinary Services
- Artists' Studios
- Automobile Rentals
- Automobile/Vehicle Repair, Major: none allowed as a primary use, but allowed as an accessory use to a permitted use
- Automobile/Vehicle Service and Repair, Minor: none allowed as a primary use, but allowed as an accessory use to a permitted use
- Automobile/Vehicle Washing: none allowed as a primary use, but allowed as an accessory use to a permitted use .
- Large Vehicle and Equipment Sales, Services, and Rental
- Service Station, limited to a maximum of one (1) facility
- Towing and Impound
- Building Materials and Services
- Commercial Recreation, Small-Scale and Large-Scale
- Eating and Drinking Establishments with Drive-Thru Facilities: limited to a maximum of two (2) facilities
- Farmer's Market
- Funeral Parlors and Mortuaries
- Live-Work Units
- All Marijuana Uses including, but not limited to, Recreational Dispensaries, Medical Dispensaries, and Cultivation Facilities

- Parking, Commercial
- Personal Services
- Plant Nurseries and Garden Centers
- Swap Meets and Flea Markets
- Tattoo and Body Piercing Parlors
- Recycling Facilities
  - Reverse Vending Machines
  - Small Indoor Collection Facilities
  - Large Collection Facilities
- Airport Land Use Classifications
  - Aircraft Refueling Stations
  - Aircraft Light Maintenance
  - Airport Transit Station
  - Airport Related Long-term Parking Lots
  - Heliports
- Transportation Facilities
- Outdoor Entertainment or Outdoor Activities
- Outdoor Display

To the extent there is a disagreement between the Parties as to whether a use is allowed or permitted, such determination shall be submitted to the City's Zoning Administrator, who shall determine whether a proposed use is a prohibited use under this Section of the Agreement, and such a decision shall be deemed a final decision of the Zoning Administrator subject to appeal in accordance with the Mesa Zoning Ordinance (Mesa City Code Title 11), Chapter 77 (Appeals), as amended.

3. Term/Termination. This Agreement shall become effective only after the Zoning Request is approved by the Mesa City Council and then on the date this Agreement is recorded in accordance with Section 4.1. This Agreement shall continue in full force and shall automatically terminate upon the earlier of: (a) termination by the mutual written agreement of the Owner and City pursuant to this Agreement, or (b) the effective date of Mesa City Council approved re-zoning of the Property to a different zoning district than the zoning described in this Agreement. The Parties agree that, if only a portion of the Property is re-zoned to a different zoning district than the zoning described in this Agreement, the Agreement shall automatically terminate only to that portion of the Property that is so re-zoned and will remain in full force and effect as to the remainder of the Property.

4. General Provisions.

4.1 Recordation. This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than ten (10) days after its full execution by the Parties.

4.2 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if: (a) delivered to the Party at the address set forth below, (b) deposited in the U.S.

Mail, registered or certified, return receipt requested, to the address of the Party set forth below; or (c) given to a recognized and reputable overnight delivery service, to the Party at the address set forth below. The addresses set forth in this Section 4.2 may be modified by a Party at any time by such Party designating in writing by notice duly given pursuant to this Section.

City: City of Mesa  
20 East Main Street, Suite 750  
Mesa, Arizona 85211  
Facsimile: 480-644-2175  
Attn: City Manager

With copy to: Mesa City Attorney's Office  
20 East Main Street, Suite 850  
Mesa, Arizona 85211  
Facsimile: 480-644-2498  
Attn: City Attorney

Owner: El Dorado Elliot 128, LLC  
c/o El Dorado Holdings, Inc.  
Attn: James F Kenny  
Gainey Corporate Center II  
8501 North Scottsdale Road, Suite 120  
Scottsdale, Arizona 85253  
Email: Jkenny@eldorado holdings.net  
With a copy to Chris Grogan at the same address as James  
F Kenny; Email: cgrogan@eldoradoholdings.net

With a copy to: Trammell Crow Arizona Development, Inc  
Attn: Ryan Norris  
2575 E Camelback Road, Suite 400  
Phoenix, AZ, 85016

Notices shall be deemed received (i) when delivered to the Party, (b) three (3) business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, or (c) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

4.3 Choice of Law, Venue and Attorneys' Fees. The laws of the State of Arizona shall govern any dispute, controversy, claim or cause of action arising out of or related to this Agreement. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any reason. Neither Party shall

be entitled to recover any of its attorneys' fees or other costs from the other Party incurred in any such dispute, controversy, claim, or cause of action, but each Party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.

4.4 Default. In the event a Party fails to perform or fails to otherwise act in accordance with any term or provision hereof (the "Defaulting Party") then the other Party (the "Non-Defaulting Party") may provide written notice to perform to the Defaulting Party (the "Notice of Default"). The Defaulting Party shall have thirty (30) days from receipt of the Notice of Default to cure the default. In the event the failure is such that more than thirty (30) days would reasonably be required to cure the default or otherwise comply with any term or provision in this Agreement, then the Defaulting Party shall notify the Non-Defaulting Party of such and the timeframe needed to cure such default, and so long as the Defaulting Party commences performance or compliance or gives notice of additional time needed to cure within the required thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation, then the time to cure the default shall be extended; however, no such extended cure period shall exceed ninety (90) days. Any written notice shall specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible.

4.5 Remedy/Equitable Relief. The Parties agree that damages alone are not an adequate remedy for the breach of any provision of this Agreement. In the event the Owner fails to perform or fails to otherwise act in accordance with any term or provision hereof City shall be entitled to immediately seek enforcement of this Agreement by means of specific performance, injunction, or other equitable relief, without any requirement to post a bond or other security. The specific performance remedy provided in this Section 4.5 shall be cumulative relief and shall not be a limitation on City's other remedies, including the right to seek contract damages under this Agreement. Additionally, City reserves the right to withhold any City permits or approvals the Owner may need to develop the Property and may revoke any City approval, permit, or certificate of occupancy if the Owner allows any of the prohibited uses listed in Section 2 to operate on the Property.

4.6 Good Standing; Authority. Each Party represents and warrants that it is a duly formed and a legally valid existing entity under the laws of the State of Arizona with respect to Owner, or a municipal corporation in Arizona with respect to City, and that the individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.

4.7 Assignment. The provisions of this Agreement are binding upon and shall inure to the benefit and burden of the Parties, and their successors in interest and assigns.

4.8 No Partnership or Joint Venture; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between the Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm, or entity not a party hereto, and no such other person, firm, or entity shall have any right or cause of action hereunder.

4.9 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

4.10 Further Documentation. The Parties agree in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

4.11 Fair Interpretation. The Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

4.12 Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last date of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix, Arizona time) on the last day of the applicable time period provided in this Agreement. A "business day" shall mean a City business day which is any day Monday through Thursday except for a legal holiday.

4.13 Conflict of Interest. Pursuant to A.R.S. § 38-503 and A.R.S. § 38-511, no member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to the terms of A.R.S. § 38-511.

4.14 Entire Agreement. This Agreement, together with the following Exhibit(s) attached hereto (which are incorporated herein by this reference) constitute the entire agreement between the Parties:

Exhibit A:     Legal Description & Depiction of the Property

All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement.

4.15 Time of the Essence. Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.

4.16 Severability. If any provision(s) of this Agreement is declared void or unenforceable, such provision(s) shall be severed from this Agreement, which shall otherwise

remain in full force and effect.

4.17 Amendments. Any change, addition or deletion to this Agreement must be by written amendment executed by City and Owner. Within ten (10) days after any amendment to this Agreement, such approved amendment shall be recorded in the Official Records of Maricopa County, Arizona.

4.18 Proposition 207 Waiver. Developer hereby waives and releases City from any and all claims under A.R.S. § 12-1134 *et seq.*, including any right to compensation for reduction to the fair market value of the Property, as a result of City's approval of this Agreement. The terms of this waiver shall run with the land and shall be binding upon all subsequent landowners and shall survive the expiration or earlier termination of this Agreement.

[SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above:

“CITY”

CITY OF MESA, ARIZONA,  
an Arizona municipal corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
City Attorney

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_ the \_\_\_\_\_ of the City of Mesa, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



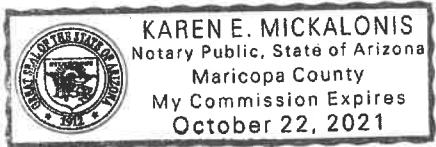
“OWNER”

EL DORADO ELLIOT 128, LLC  
an Arizona limited liability company

By: Chris Grogan  
Its: Executive Vice President

STATE OF Arizona )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 28 day of June, 2021, by Chris Grogan, the Executive Vice President of El Dorado Elliott 128, LLC, an Arizona limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Owner.



Karen E. Mickalonis  
Notary Public

My commission expires:

10-22-2021

**EXHIBIT A**



**LEGAL DESCRIPTION  
EL DORADO ELLIOT 128**

Job No. 20-1421

January 21, 2021

A PORTION OF THE SOUTHEAST QUARTER SECTION 9, TOWNSHIP 1 SOUTH, RANGE 7 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 9, FROM WHICH THE SOUTH QUARTER CORNER THEREOF BEARS, NORTH 89 DEGREES 39 MINUTES 44 SECONDS WEST, 2625.41 FEET;

THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 9, NORTH 89 DEGREES 39 MINUTES 44 SECONDS WEST, 774.00 FEET;

THENCE LEAVING SAID SOUTH LINE, NORTH 00 DEGREES 20 MINUTES 16 SECONDS EAST, 65.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 89 DEGREES 39 MINUTES 44 SECONDS WEST, 559.14 FEET;

THENCE SOUTH 00 DEGREES 50 MINUTES 09 SECONDS EAST, 15.00 FEET;

THENCE NORTH 89 DEGREES 39 MINUTES 44 SECONDS WEST, 128.72 FEET;

THENCE NORTH 00 DEGREES 20 MINUTES 26 SECONDS EAST, 14.91 FEET;

THENCE NORTH 89 DEGREES 39 MINUTES 44 SECONDS WEST, 215.00 FEET;

THENCE NORTH 88 DEGREES 11 MINUTES 18 SECONDS WEST, 169.45 FEET;

THENCE NORTH 82 DEGREES 29 MINUTES 36 SECONDS WEST, 110.46 FEET;

THENCE NORTH 88 DEGREES 13 MINUTES 26 SECONDS WEST, 158.89 FEET;

THENCE NORTH 48 DEGREES 10 MINUTES 16 SECONDS WEST, 42.10 FEET;

THENCE NORTH 03 DEGREES 53 MINUTES 55 SECONDS WEST, 862.08 FEET;

THENCE NORTH 09 DEGREES 18 MINUTES 14 SECONDS WEST, 348.46 FEET;

THENCE SOUTH 89 DEGREES 39 MINUTES 09 SECONDS EAST, 845.49 FEET TO A NON-TANGENT CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 80.00 FEET, THE CENTER OF WHICH BEARS NORTH 68 DEGREES 26 MINUTES 52 SECONDS EAST;

EPS Group, Inc. • 1130 N. Alma School Rd, Suite 120 • Mesa, AZ 85201  
Tel (480) 503-2250 • Fax (480) 503-2258

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THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 121 DEGREES 13 MINUTES 49 SECONDS, AND AN ARC LENGTH OF 169.27 FEET TO THE BEGINNING OF A REVERSE CURVE; CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 20.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 53 DEGREES 07 MINUTES 48 SECONDS, AND AN ARC LENGTH OF 18.55 FEET TO A TANGENT LINE;

THENCE SOUTH 89 DEGREES 39 MINUTES 09 SECONDS EAST, 494.25 FEET;

THENCE SOUTH 00 DEGREES 20 MINUTES 16 SECONDS WEST, 1242.78 FEET TO THE POINT OF BEGINNING.

SAID PORTION OF LAND CONTAINING 1,763,907 SQUARE FEET, OR 40.4937 ACRES, MORE OR LESS, AND BEING SUBJECT TO ANY EASEMENTS, RESTRICTIONS, AND/OR RIGHTS-OF-WAYS OF RECORD OR OTHERWISE.

THIS DESCRIPTION SHOWN HEREON IS NOT TO BE USED TO VIOLATE SUBDIVISION REGULATIONS OF THE STATE, COUNTY AND/OR MUNICIPALITY, OR ANY OTHER LAND DIVISION RESTRICTIONS.



EPS Group, Inc. • 1130 N. Alma School Rd, Suite 120 • Mesa, AZ 85201  
Tel (480) 503-2258 • Fax (480) 503-2258

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### CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	169.27'	80.00'	121°13'49"	139.41'	S82°10'03"E
C2	18.55'	20.00'	53°07'48"	17.89'	N63°46'57"E

### LINE TABLE

LINE	BEARING	LENGTH
L1	N89°39'44"W	559.14'
L2	S00°50'09"E	15.00'
L3	N89°39'44"W	128.72'
L4	N00°20'26"E	14.91'
L5	N89°39'44"W	215.00'
L6	N88°11'18"W	169.45'
L7	N82°29'36"W	110.46'
L8	N88°13'26"W	158.89'
L9	N48°10'16"W	42.10'
L10	N03°53'55"W	862.08'
L11	N09°18'14"W	348.46'
L12	S89°39'09"E	845.49'
L13	S89°39'09"E	494.25'
L14	S00°20'16"W	1242.78'



*Robert A. Johnston*

SHEET 2 OF 2

20-1421

EL DORADO ELLIOT 128  
OVERALL LEGAL DESCRIPTION

EXHIBIT "A"



**EPS**  
GROUP

1130 N. Alma School Rd.  
Ste. 120 Mesa, AZ 85201  
740.503.2250 | F. 405.501.2256  
www.epsgrainc.com

